

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

This matter is before the court on Nakeo T. Vance’s (“Vance”) motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (West Supp. 2005). After a thorough review of the facts and pertinent law, the court summarily dismisses Vance’s motion.

Vance filed a previous motion under 28 U.S.C. § 2255 before this court on September 17, 2002 (“first motion”). The court summary dismissed the first motion on the basis that it was untimely under § 2255. United States v. Vance, No. 02-3085 (D.S.C. Sept. 25, 2002) (unpublished). Vance appealed, but the United States Court of Appeals dismissed his appeal for failure to prosecute on March 5, 2004. Vance filed the instant § 2255 motion on July 27, 2005.<sup>1</sup>

“[A] habeas or § 2255 petition that is properly dismissed as time-barred . . . constitutes an adjudication on the merits for successive purposes. Villanueva v. United States, 346 F.3d 55, 61 (2d Cir. 2003). “[A] prisoner seeking to file a successive application in the district court must first obtain authorization from the appropriate court of

<sup>1</sup>See *Houston v. Lack*, 487 U.S. 266 (1988).

appeals.” United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003) (citing 28 U.S.C. § 2244(b)(3)). As Vance has not obtained the pre-filing authorization necessary for him to proceed with his successive motion, the court may not consider the motion.

Therefore, it is

**ORDERED** that Vance’s section 2255 motion is summarily dismissed.

**IT IS SO ORDERED.**

s/ Henry M. Herlong, Jr.  
United States District Judge

Greenville, South Carolina  
August 25, 2005

**NOTICE OF RIGHT TO APPEAL**

The movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.